



PUBLIC NOTICE

Federal Communications Commission
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DA 05-169

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MB Docket No. 05-28

**MEDIA BUREAU SEEKS COMMENT FOR INQUIRY REQUIRED BY THE SATELLITE
HOME VIEWER EXTENSION AND REAUTHORIZATION ACT ON RULES AFFECTING
COMPETITION IN THE TELEVISION MARKETPLACE**

Comment Date: March 1, 2005

Reply Comment Date: March 16, 2005

On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted.¹ Section 208 of SHVERA requires the Commission to conduct an inquiry on the impact of specific provisions of the Communications Act of 1934, as amended, and Commission rules on competition in the multichannel video programming distribution (MVPD) market. The Commission is required to submit a report to Congress on the results of its inquiry no later than nine months after SHVERA's enactment date (*i.e.*, September 8, 2005).

By this Public Notice, the Media Bureau (Bureau) initiates the inquiry required by section 208 and seeks comment for use in preparation of the required report. Section 208 states:

STUDY OF IMPACT ON CABLE TELEVISION SERVICE

- (a) **STUDY REQUIRED** - No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.
- (b) **REPORT REQUIRED** - The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the

¹ The Satellite Home Viewer Extension Reauthorization Act (SHVERA), Pub. L. No. 108-447; 118 Stat. 2809 (2004). The SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.

Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act.²

The following is a brief explanation of the specific rules the Commission's study must address.

- **Retransmission Consent**³: In general, cable and direct broadcast satellite (DBS) operators must obtain retransmission consent from a commercial broadcast television station in order to carry its signal unless the broadcaster has elected to be carried pursuant to must-carry status.⁴ Under retransmission consent, the broadcaster and cable or DBS operator negotiate an agreement that may involve compensation in return for permission to retransmit the broadcast television station.
- **The Network Program Nonduplication Rules**⁵ allow a local commercial television station to protect its exclusive distribution rights for network programming based on its affiliate agreement with the network within the geographic zone specified in the Commission's rules.⁶ In the cable context, the station may assert these rights against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, network nonduplication rights may only be asserted against the duplicative programming carried on a "nationally distributed superstation."⁷
- **The Syndicated Program Exclusivity Rules**⁸ allow a local television broadcast station or distributor to protect its exclusive distribution rights for syndicated programming within the geographic zone specified in the Commission's rules.⁹ In the cable context, the station or distributor may assert these rights against duplicative programming on a broadcast station carried by a cable operator. In the satellite context, syndicated exclusivity rights may only be asserted against the duplicative programming carried on a nationally distributed superstation.
- **The Sports Blackout Rules**¹⁰ protect a sports team or league's exclusive distribution rights to a local sporting event (*i.e.*, a sports team). The sports blackout rules are applied only if a local TV broadcast station is not carrying the local sporting event. If a local TV broadcast station does not have permission to carry the local game, then no other broadcaster's signal displaying the game can be carried by cable or satellite to subscribers in the protected local blackout zone.¹¹

² SHVERA, Pub. L. No. 108-447 §208, 118 Stat. 2809, 3428-29 (2004).

³ 47 U.S.C. § 325(b); 47 C.F.R. §76.64-70.

⁴ 47 U.S.C. § 325(b); 47 C.F.R. §76.64.

⁵ 47 C.F.R. §76.120-122 and §76.92-95.

⁶ See 47 C.F.R. §§ 76.92 and 76.93. The Commission's rules provide stations such protection within a 35-mile geographic zone (or 55 miles in smaller markets), which extends from the reference point of the community of license of the television station. See 47 C.F.R. §§ 73.658(m), 76.53, and 76.92 Note.

⁷ 47 C.F.R. §76.122, 124. The FCC's definition of "nationally distributed superstation" can be found at 47 C.F.R. §76.120.

⁸ 47 C.F.R. §76.101-110, §76.120 and §76.123-125.

⁹ See 47 C.F.R. §§ 76.101 and 76.103. The Commission's rules provide such protection within a station's 35-mile geographic zone, which extends from the reference point of the community of license of the television station. See 47 C.F.R. §§ 73.658(m), 76.53, and 76.101 Note.

¹⁰ 47 C.F.R. §76.111, §76.120, §76.127-130.

¹¹ 47 C.F.R. §76.128.

In addition to these existing rules, the SHVERA also authorizes satellite carriers to offer distant digital stations and out-of-market "significantly viewed" stations to subscribers under certain circumstances.¹² Existing statutory provisions permit cable operators to offer such stations.¹³

The Bureau seeks comments, information and analysis on how these rules, individually or collectively, affect competition in the MVPD market. The Bureau also seeks studies that measure the impact of these rules, either individually or collectively, on competition generally. We further request comment and analysis on the impact of these rules on the ability of rural cable operators to compete with DBS in the provision of digital broadcast television signals to consumers. In addition, the Bureau requests recommendations for statutory changes regarding these four rules affecting competition in the MVPD market.

Ex Parte Rules. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

Comments Information. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties must file comments on or before March 1, 2005 and reply comments on or before March 16, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998). Documents filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers are referenced in the caption of the comments, however, commenters must transmit an electronic copy of the comments to each docket or rulemaking number in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of the comment, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C., 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW, Washington, D.C., 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone

¹² See 47 U.S.C. Sections 339 and 340, as amended by Sections 202 and 204 of the SHVERA.

¹³ 17 U.S.C § 111 (a), (c), and (f).

(800) 378-3160, or via email to fcc@bcpiweb.com. In addition, parties should serve one copy of each filing via email or three paper copies to Brenda Lewis, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., 2-C266, Washington, D.C., 20554, or one electronic copy via e-mail to Brenda.Lewis@fcc.gov.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or Bill.Cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their website at <http://www.bcpiweb.com>.

Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

For further information, contact Marcia Glauberman, Media Bureau, (202) 418-7046. Press inquiries should be directed to Rebecca Fisher, Media Bureau, (202) 418-2359. TTY: (202) 418-7172 or (888) 835-5322

By the Chief, Media Bureau

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